

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 24 of 2004
Old F.A.F.O. No. 1040 of 1990

1. State of U.P. through Secretary, Public Works Department
U.P. Lucknow.
2. Executive Engineer, Construction Division, Public
Works Department, Askote, Tahsil Didihat,
District Pithoragarh

... **Appellant.**

Versus

1. Smt. Krishna Devi, widow of late Hari Singh,
2. Kharag Singh, Son of late Hari Singh,
3. Nandan Singh, son of late Hari Singh,
4. Km. Deoki Devi, daughter of late Hari Singh,
All residents of village Tham, Patti Malla Askote
P.S. Jauljibi, District Pithoragarh.
(Applicants)

... **Respondents.**

Sri Nand Prasad, learned Standing Counsel for the appellants.
Sri G.B.Pande, Adv., learned counsel for respondents-claimants.

Date May 01, 2006.

(Hon'ble B.S. Verma, J.)

This appeal has been preferred under Section 30 of the Workmen Compensation Act, 1923 (***for short the Act***) against the judgment and award dated 30-7-1990 passed by the learned Workmen's Compensation Commissioner Pithoragarh (***for short the Commissioner***) in W.C. Case No. 9 of 1987, Smt. Krishna Devi and others Vs. Executive Engineer, Construction Division, PWD, whereby compensation of Rs. 37,835-52 was awarded to the claimants along with interest @ 6% per annum from the date of accident till payment.

Relevant facts of the case are that Hari Singh, husband of claimant Krishna Devi, who was working as Chowkidar under the employment of the opposite party- Executive Engineer, lost his life in the course of his employment 27-12-1985. It was alleged that the

deceased was deputed in night duty without having been provided with blankets etc. and for want of the same he became ill and subsequently died. The claimants in support of the petition filed affidavit, death certificate and other relevant documents before the Commissioner.

Notice was issued to the employer, who filed written statement and contested the claim petition. The learned Commissioner on the basis of the pleadings of parties framed necessary issues in the case. After recording the evidence and perusing the same, the learned Commissioner came to the conclusion that the deceased suffered from ailment, namely Pneumonia and died in the course of his employment. On the issue of quantum, the learned Commissioner found that the age of the deceased Hari Singh at the relevant time was 35 years and he was getting wages @ Rs. 480/- per month and after adopting the procedure as contained in Section 4 of the Act, compensation was fixed at Rs. 37,835.52 but the claim for penalty was rejected and the claim petition was decreed as mentioned earlier.

At the outset, it may be mentioned that while filing an appeal under section 30 of the Act, it is requirement of law that there ought to have been substantial question of law to be determined in the appeal.

I have heard Sri Nand Prasad, learned Standing Counsel appearing on behalf of the appellants. It has been conceded by the learned counsel that no substantial question of law has been raised in the memo of appeal.

In the memo of appeal, the appellants have assailed the impugned judgment and award dated 30-7-1990 on the grounds which related only to the finding of fact and neither any substantial question of law has been raised, nor it any such substantial question of law is involved in the appeal. It is well settled that if any legal

issue is involved in the case, the same is required to be determined in the appeal. I have gone through the entire material on record including the findings recorded by the learned Commissioner. The learned Commissioner after perusing the evidence led by the parties have recorded categorical finding regarding the death of the deceased in the course of his employment as Chowkidar and after taking into consideration the age of the deceased at the time of his death and the wages, which were being paid to the deceased workman, the learned Commissioner has held that the age of the deceased at the time of death was 35 years and he was getting Rs. 480/- per month from the employer. After adopting the procedure laid down in Section 4 of the Act, the compensation was fixed by the Commissioner at Rs. 37,835-52 P. Having considered the material on record, I do not find any illegality or perversity in the impugned award passed by the Commissioner against the employer-appellant. No substantial question of law has arisen in the present appeal. There is no force in the appeal preferred by the appellants under Section 30 of the Act, which is liable to be dismissed outright.

The appeal is hereby dismissed. The impugned judgment and award dated 30-7-1990 is upheld. No order as to costs.

The amount of award, i.e. Rs. 37,835-52, deposited by the employer before the learned Commissioner on 22-9-1990 shall be paid to the claimant-respondent.

(B.S. Verma, J.)

RCP